

Claim Rejections Under 35 U.S.C. § 112

Claims 1, 8, 9, 11, and 12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner contends that the disclosure of the “. . . preliminary order for crediting the accounts . . . ,” does not provide details. The Examiner states that “[f]or examination purposes, the Examiner will interpret the phrase . . . [to mean] a maximum amount or a fixed amount that a provider is willing to compensate those customers that access the information.” (Detailed Action, page 3.) Applicant respectfully traverses the rejection.

Applicant respectfully disagrees with the Examiner’s position. The specification clearly explains that “[t]he preliminary nature of the order means that the actual crediting is not yet accomplished, because there is no evidence about the intended recipients actually receiving the information or service to be transmitted.” (Specification, page 7, lines 30-34.) Once there is evidence that the intended recipients have actually received the information or service to be transmitted, then the crediting will occur. Further, the Specification discloses other embodiments of the present invention and discusses the preliminary order, e.g., page 9, lines 20-35.

Thus, the basis for the Examiner’s interpretation of the phrase is not understood is inaccurate, and does not comport with the unequivocal definition provided by the cited portion of the specification. Reconsideration and withdrawal of this rejection is requested.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-6 and 8-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Goldhaber et al. (U.S. Patent No. 5,794,210) (“Goldhaber”). Applicant respectfully traverses the rejection.

Applicant submits that Goldhaber is directed to a system which provides for the **immediate payment** to users for paying attention to an advertisement distributed over a computer network. Orthogonal Sponsorship, allows advertisers to detach their messages from program content and

explicitly target their audience. A special icon displayed on a computer screen may represent compensation and allow users to choose whether they will view an ad and receive associated compensation. Targeting users may be provided by reference to a data base of digitally stored demographic profiles of potential users. Information can be routed to users based on demographics. Goldhaber does not teach, nor suggest, transmitting a preliminary order for crediting accounts associated with the intended recipients, as required by the claimed invention.

The Examiner relies on Goldhaber, Fig. 2 and the related text as disclosing “transmitting through the computer or cellular network a preliminary order for crediting accounts associated with the intended recipients.” (Detailed Action, page 4.) Applicant submits that Fig. 2 and the related text, (*see* col. 10, lines 8-38), discloses that a consumer requests information, the consumer is asked to compensate the provider for the information, the consumer pays for the information, and the provider provides the information. This section of Goldhaber has nothing to do with transmitting a preliminary order for crediting accounts, as required by the claimed invention.

Moreover, this portion of Goldhaber does not teach the “preliminary” feature as inaccurately interpreted by the Examiner. As discussed above, the Examiner wrongly interprets this feature as “a maximum amount or a fixed amount that a provider is willing to compensate those customers that access the information.” In Goldhaber the consumer is compensating the provider of information; the provider is not compensating the customer.

Further, the Examiner contends that the Applicant has relied on features not present in the claims. (*See*, Detailed Action, page 9.) However, in the previous Response, Applicant merely asserted that one of the advantages of the “preliminary” feature is that by transmitting a preliminary crediting order before transmitting the information or service to the subscriber terminals, there is a reduction in the service provider's chance for cheating. This assertion of advantage should not distract the Examiner from the fact that the “preliminary” feature recited in the claims is distinguishable over the Goldhaber reference itself.

Withdrawal and reconsideration of the rejection is requested.

Claim Rejection Under 35 U.S.C. § 103

Claims 7 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of the Examiner's statement of what was known in the art at the time of the invention. Applicant respectfully traverses the rejection.

With respect to the rejection of claim 7, the Examiner acknowledges that Goldhaber fails to disclose "that crediting an account associated with said certain recipient comprises the substeps of defining the time it has taken for said indication to be received and crediting said account by an amount which is inversely proportional to said time." (Detailed Action, page 7.) The Examiner contends that Goldhaber discloses the use of time-sensitive incentives such as coupons and relies on the Examiner's own personal knowledge that it would have been obvious "to extend Goldhaber to disclose time-sensitive credits, **perhaps** based on a subscriber's response time." (Emphasis added.)

First, the Examiner's statement of what was known in the art at the time of the invention is not supported by any "concrete evidence in the record" (See MPEP § 2144.04(c), citing *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001).) Accordingly, Applicant submits that the Examiner is relying on personal knowledge and respectfully requests that the Examiner supports this personal knowledge with affidavits containing data as specific as possible pursuant to 37 C.F.R. §1.104(d)(2). In accordance with § 1.104(d)(2), Applicant is permitted to contradict or explain such affidavits with affidavits of the Applicant or other persons. Applicant submits that without supporting evidence, the Examiner has impermissibly relied on personal knowledge and, thus, has not established a *prima facie* case of obviousness. As a procedural matter, Applicant respectfully submits that the Examiner has improperly deemed the present Office Action as a Final Office Action.

Applicant submits that Goldhaber's disclosure of coupons does not make obvious the claimed feature of crediting the account by an amount which is inversely proportional to the time. First, Goldhaber neither discloses, nor suggests, that its coupons are time-sensitive. And even assuming that Goldhaber were to suggest that the coupons were time-sensitive, it would not have

CONCLUSION

Each and every point raised in the Final Office Action mailed December 15, 2005 has been addressed on the basis of the above amendments and remarks. In view of the foregoing it is believed that claims 1-13 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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